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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. [REDACTED] 14

R. J. THOMAS,

Appellant,

vs.

H. W. COLLINS, SHERIFF OF TRAVIS COUNTY, TEXAS.

APPEAL FROM THE SUPREME COURT OF THE STATE OF TEXAS.

STATEMENT OPPOSING JURISDICTION.

GERALD C. MANN,

Attorney General of Texas,

FAGAN DICKSON,

Assistant Attorney General of Texas,

Counsel for Appellee.

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IN THE SUPREME COURT OF THE STATE OF TEXAS

EX PARTE R. J. THOMAS.

STATEMENT IN OPPOSITION TO JURISDICTION.

To the Honorable the Supreme Court of the United States:

I.

The contempt order based on Section 5 of Article 5154a, Vernon's Annotated Civil Statutes of Texas does not abridge appellant's right of free speech.

The verified petition of Appellee on which the temporary restraining order was issued against Appellant, contained this allegation:

"The plaintiff further shows that the defendant as President of U. A. W. and Vice-president of C. I. O. is engaged in the business of organizing employees of industrial plants in Texas and throughout the United States into labor unions affiliated with the C. I. O. and that if he makes the solicitations, as threatened, without an organizer's card from the Secretary of State, as required by said House Bill No. 100, he will be flouting the Texas law and acting in defiance of it."

The acts on the part of Appellant for which he was adjudged to be in contempt of the trial court's temporary restraining order, were alleged in the Motion for Contempt as follows:

"That on the 23rd day of September, 1943, at the City Hall in Pelly, Harris County, Texas, the said R. J. Thomas, without procuring an organizer's card as re-

quired by law of labor organizers and without making application to the Secretary of State for such a card, did at said time and place solicit Pat O'Sullivan, a resident of Bay Town, Texas, and an employee of the Humble Oil & Refining Company's plant at Bay Town to join a local union of the Oil Workers International Union, which said union is affiliated with the Congress of Industrial Organizations of which said R. J. Thomas is Vice-president. The said O'Sullivan at said time was not a member of the local union of the Oil Workers International Union and said R. J. Thomas then and there did take his application to become a member, all in violation of this court's order and the writ of temporary restraining order issued pursuant thereto."

The evidence supported these allegations and the judgment in contempt is based thereon. The issue therefore does not involve Appellant's right to make a speech, but it involves his solicitation as an unregistered labor organizer engaged in the business of organizing labor unions of a particular individual to join a named union. The solicitation here alleged and proved consisted in Appellant's act of taking the application of a non-member for membership in a labor union. The acts for which Appellant is being punished accordingly involve something more than speech making.

The very essence of "previous restraint" on free speech which is prohibited by the Fourteenth Amendment is censorship. Section 5 of Article 5154a, Vernon's Annotated Civil Statutes of Texas was not designed for censorship. This statute, as applied against Appellant, did not amount to a censorship. There is no evidence that the statute has been or will ever be used or applied by the officials of the State of Texas in order to accomplish a censorship. The Supreme Court of Texas has decided these points and its judgment on these points is final. The Section of the Statute here involved is nothing more than a registration statute.

and it is clearly a proper exercise of the police power of the State of Texas. The cases cited in the opinion of the Supreme Court of Texas fully support its decision.

II.

Section 4a of Article 5154a, Vernon's Annotated Civil Statutes of Texas is not involved in this appeal.

The Appellant Thomas testified that he was born in Ohio (S. F. 42) and there is no evidence that he has been convicted of a felony. The Supreme Court of Texas did not pass on the constitutionality of Section 4a of the Act. Section 4a of the Act reads as follows:

"It shall be unlawful for any alien or any person convicted of a felony charge to serve as an officer or official of a labor union or as a labor organizer as defined in this Act. This Section shall not apply to a person who may have been convicted of a felony and whose rights of citizenship shall have been fully restored."

Section 15 of the Act contains a severable clause which reads as follows:

"Sec. 15. * * * If any Section or part whatsoever of this Act shall be held to be invalid, as in contravention of the Constitution, such invalidity shall not affect the remaining portions thereof, it being the express intention of the Legislature to enact such Act without respect to such Section or part so held to be invalid."

Under this provision, Section 5 of the Act may be valid and enforceable and the judgment of the Texas Supreme Court accordingly correct, even though this court should be of the opinion that Section 4a of the Act is invalid. However, Section 4a of the Act, in our opinion, constitutes a proper exercise of the police power of the State of Texas. The quality and allegiance of those who organize, lead and

represent large groups of working men within the State of Texas are matters of high importance and affect the safety and the economy of the State itself. The Appellant Thomas testified in the trial court that increased political activity in the State of Texas was one of the objectives of his labor union and those with whom his union was affiliated (S. F. 82). Since aliens and felons have no political rights under our Government, it is no denial of due process or of equal protection of the laws to prohibit them from occupying positions of power and leadership through which they can materially influence the political life of the State.

Section 4a is clearly a valid exercise of the State's police power under the principles announced by this court in the case of *Terrace v. Thompson*, 263 U. S. 197, 44 Sup. Ct. 15, 68 L. Ed. 255.

Wherefore, the State of Texas prays that this appeal be dismissed for want of jurisdiction.

Respectfully submitted,

(Signed)

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